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January 23, 2006

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



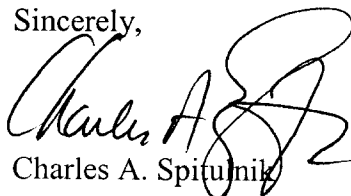
Re: *Norfolk Southern Railway Company - - Abandonment Exemption - -
In Baltimore County, MD; Docket No. AB-290 (Sub-No. 237X)*

Dear Sir:

I am enclosing an original and ten (10) copies of Comments of the Maryland Transit Administration in Support of the Abandonment in the above referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

If you should have any questions, please feel free to call.

Sincerely,


Charles A. Spitulnik

ENTERED
Office of Proceedings

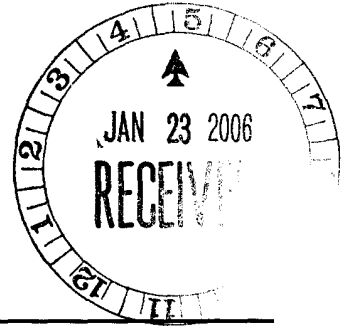
JAN 23 2006

Part of
Public Record

Enclosure

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

Docket No. AB-290 (Sub-No. 237X)



NORFOLK SOUTHERN RAILWAY COMPANY --
ABANDONMENT EXEMPTION --
IN BALTIMORE COUNTY, MD

ENTERED
Office of Proceedings

JAN 23 2006

COMMENTS OF THE
MARYLAND TRANSIT ADMINISTRATION
IN SUPPORT OF THE ABANDONMENT

Part of
Public Record

The Maryland Transit Administration, a modal administration of the Maryland Department of Transportation acting for and on behalf of the State of Maryland ("MTA"), hereby submits these comments in support of the proposed abandonment.

BACKGROUND

MTA acquired the line that is the subject of this abandonment from the Consolidated Rail Corporation ("Conrail") in 1990. In that transaction, Conrail specifically retained the sole, exclusive and perpetual right to provide freight service over the line. Norfolk Southern Railway Company ("NS") acquired the line from Conrail as part of the transactions approved by this Board in STB F. D. No. 33388, *et al.*, *CSX Corporation, et al. - - Control and Operating Leases/Agreements - - Conrail, Inc., et al.*, Decision No. 89, 3 S.T.B. 196 (1998).

MTA acquired the line for the purpose of constructing and operating a light rail transit line that currently operates in the corridor between North Avenue and Cockeysville, Maryland. South of North Avenue, MTA's light rail line continues through downtown Baltimore to the southern terminus at BWI Thurgood Marshall Airport. In order to secure its ability to increase frequency and reliability of service, consistent with the needs of the public that with increasing

frequency and in increasing numbers uses the light rail service, MTA has assisted in securing alternative transportation arrangements for the three major shippers on the line. In addition, MTA has recently completed a project that double-tracks the entire segment north of North Avenue, thus substantially improving its ability to reliably and efficiently serve the public.

When MTA acquired the line, the parties agreed that Conrail would continue to provide freight service to the shippers north of North Avenue, and to the Flexi-Flo transload facility that is located at North Avenue. Service to the Flexi-Flo involves crossing the line segment that is the subject of this abandonment. Service to the other shippers involved moving freight on the same tracks used for the light rail service, during a window of operating hours when the light rail service was not operating. Following the abandonment proposed in this transaction, freight service to the Flexi-Flo facility by NS will continue in accordance with the terms of the Operating Agreement, which provides that Conrail (now, NS) has unlimited access to that facility. The abandonment authority sought in this proceeding begins immediately to the north of the location where NS crosses over to reach the Flexi-Flo facility. The line south of the cross-over point has previously been abandoned.

Other than the continuing service to the Flexi-Flo facility, the remaining active shippers on the line will no longer receive direct rail service. The three large volume shippers on the line all support this abandonment. Notwithstanding the unsubstantiated statements of James Riffin in the Protest/Opposition filed on January 13, 2006 in this proceeding, these three shippers have prepared letters of support for this abandonment that are attached to these Comments as Exhibits A, B and C. Baltimore Gas & Electric ("BGE"), in a letter dated December 21, 2005 (attached to these Comments as Exhibit A) from Kenneth W. DeFontes, Jr, President and CEO, explains that BGE has a facility on the line where it stores utility poles and other equipment necessary for the

management and operation of its business. He states that BGE has made other transportation arrangements and is "pleased to support the NS application to abandon this line and cease providing rail service to our facility." *See*, Exhibit A.

Similarly, Thomas Q. Minarik, Plant Manager at the Fleischmann's Vinegar Company, Inc., has stated in a letter dated January 9, 2006 (attached to these Comments as Exhibit B), states that it too has made other transportation arrangements to replace the rail service it previously received at its facility on Brand Avenue in Baltimore. Fleischmann's also "support[s] the NS application to abandon this line and cease providing rail service to our facility." *See*, Exhibit B.

North American Performance Minerals and Ceramics at E.C.C.A. Calcium Products, Inc. d/b/a IMERYYS Pigments and Additives Group ("IMERYYS") also supports this abandonment. A letter from Catherine H. LaFiandra, attached to these Comments as Exhibit C, states that IMERYYS has a facility on Beaver Dam Road in Cockeysville where the company processes ground calcium carbonate. She states that "[w]hile IMERYYS has in the past relied on rail service at this location, we have made other arrangements for our transportation needs." Continuing, Ms. LaFiandra states that it "is pleased to support the NS application to abandon this line and cease providing rail service to our facility." *See*, Exhibit C.

In view of the support of the shippers who previously used service on this line but who have now made other transportation arrangements, and of the MTA, the NS Petition for Exemption should be approved.

ARGUMENT

THE ABANDONMENT SHOULD BE APPROVED AND THE COMMON CARRIER OBLIGATION WITH RESPECT TO THE SUBJECT LINE EXTINGUISHED

NS has satisfied the criteria for permitting an exemption of the abandonment of the service obligation on the subject line. The shippers on the line support it and the State of Maryland Department of Transportation, through the MTA, agrees. The abandonment should be approved. Moreover, in view of the existing and projected continued use of the line for light rail transit service, MTA agrees with the request of NS for exemption from the public use, trail use and offer of financial assistance provisions of 49 U.S.C. §§10904 and 10905 and 49 C.F.R. 1152.29(c).

There is no realistic prospect for continued freight service on the line, at least at a volume that would justify denial of this abandonment. NS, in its Petition, describes the low volumes of traffic on the line in recent years. 49 U.S.C. 10502 permits this Board to exempt a carrier from the obligations to file a full abandonment application, but to nonetheless permit abandonment of a line and common carrier service on it, when (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from abuse of market power.

For reasons explained by NS in its Petition, this transaction meets all of those requirements. Granting this exemption is consistent with the transportation policy articulated in section 10101. Specifically, §10101(2) and (7) state that it is the policy of the government "to minimize the need for Federal regulatory control over the rail transportation system" and "to reduce regulatory barriers to entry into and exit from the industry". Where, as here, the shippers

support the proposal, the volume of business on the line does not otherwise justify its continued operation, permitting NS to easily exit the business of serving this line segment makes sense.

The transaction is of limited scope – the line segment is short, and with the transfer of freight shipments by the three shippers to other facilities, there is little prospect for movement of freight traffic on the line. Moreover, the shippers have no need for protection from abuse of market power. As NS notes, MTA has entered into agreements with all three of BGE, Fleischmann's and IMERYS that provide for alternative shipping arrangements that are satisfactory to those shippers and that permit them to support this abandonment and the termination of the common carrier obligation associated with the line.

The arrangements with Conrail at the time that MTA acquired the line made clear that Conrail retained the full freight service common carrier obligation on the line. MTA never held itself out as a common carrier, and has never provided freight service. Conrail retained the exclusive rights to provide that service, and NS now holds it. Mere acquisition of ownership of a line over which a rail carrier continues to have operating and service obligations did not cause MTA to become a common carrier with respect to this line. *Cf. STB Docket No. AB-863X, City of Venice - - Abandonment Exemption - - In Venice, IL and St. Louis, MO, slip op. at 6 (Service Date June 22, 2004) (STB ruled that City that acquired a line slated for abandonment over which the rail carrier continued providing the only common carrier service did not acquire a common carrier obligation.)* As a result, the termination of NS's rights and obligations extinguishes the entire common carrier obligation on the line.

MTA does not own the line that NS operates and uses to serve the Flexi-Flo facility *via* a crossing over the MTA line. That line was not part of the MTA acquisition from Conrail. The arrangements that permitted NS to cross the line that is the subject of this abandonment to reach

the Flexi-Flo facility remain unaffected by the authority sought here. Except for the service by NS on its line that crosses the MTA track, there will be no freight service on this line. As a result, there will be no common carrier obligation remaining on the line. The three shippers who have registered their support for this abandonment, that is, BGE, Fleischmann's and IMERYs, all acknowledge and support MTA's position that no common carrier obligation will remain on this line following the NS abandonment. *See Exhibits A, B and C.*

The protest and opposition filed by Mr. Riffin on January 13 does not provide a sufficient basis to justify denying the abandonment authorization here. The largest shippers on the line have expressed their support. Mr. Riffin offers evidence only of his own interest in moving a few cars a year. This does not outweigh the interests of the shippers who, according to the letters that are attached, support this abandonment because they have made alternative transportation arrangements. In addition, the public interest lies in permitting cessation of freight service to permit MTA to continue developing and improving the light rail transit service currently operating on the line.

In this instance, and notwithstanding the protest of Mr. Riffin, the public interest clearly supports cessation of freight service on the line and the abandonment of service and the freight common carrier obligation associated with it.

CONCLUSION

Wherefore, and in view of all of the foregoing and of the support for the proposed abandonment that is set forth in the attached letters from BGE, Fleischmann's and IMERYs,

MTA respectfully requests the Board to approve the Petition for Exemption filed by NS for abandonment of freight service and the common carrier obligation on this line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", is written over a horizontal line.

Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
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Washington, DC 20001
(202) 842-2345
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Counsel for the Maryland Transit
Administration

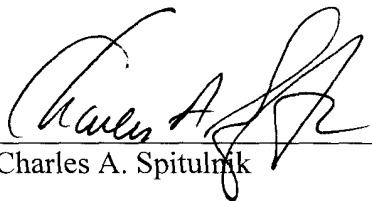
CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Comments of the Maryland Transit Administration in Support of the Abandonment upon the following parties of record to this proceeding by depositing a copy in the U.S. mail, postage prepaid and duly addressed:

James R. Paschall, Esquire
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-9241

James Riffin
D/B/A NCRR LLC
1941 Greenspring Dr
Timonium, MD 21093

Dated this 23rd day of January, 2006.


Charles A. Spitulnik

ND: 4852-0867-3024, Ver 1

Kenneth W. DeFontes, Jr.
President and CEO

P.O. Box 1475
Baltimore, Maryland 21203-1475



A Constellation Energy Company

December 21, 2005

Mr. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Norfolk Southern Railway Company Abandonment of Cockeysville
Industrial Track in Baltimore County, Maryland

Dear Mr. Williams:

On behalf of Baltimore Gas and Electric Company (BGE), I am writing to indicate BGE's support for the application of Norfolk Southern Railway Company and Pennsylvania Lines LLC (NS) to abandon and discontinue all rail freight services on the NS line between North Avenue and Cockeysville in Baltimore, Maryland. This track is known as the "Cockeysville Industrial Track" or the "Light Rail North" line.

BGE has a facility located at 10500 York Road, Cockeysville, MD 21030, that is located on the Cockeysville Industrial Track. At that facility, we store utility poles and other equipment needed in the day-to-day management and operation of our business. While BGE has in the past relied on rail service at this location, we have made other arrangements for our transportation needs. As a result, we are pleased to support the NS application to abandon this line and cease providing rail service to our facility. We acknowledge and agree with the position of the Maryland Department of Transportation and the Maryland Transit Administration that neither of those agencies, nor the State of Maryland, has acquired or will acquire any common carrier obligation with respect to the Cockeysville Industrial Track.

If you have any questions about this matter, please do not hesitate to call on me.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth W. DeFontes, Jr." followed by a large, stylized flourish.

Kenneth W. DeFontes, Jr.
President and CEO

cc: James R. Paschall, Esq., Norfolk Southern Corp.
Charles A. Spitulnik, Esq., Counsel for Maryland DOT

B



Fleischmann's Vinegar Company, Inc.
1900 Brand Avenue
Baltimore, MD 21209-4802
OFFICE: (410) 466-7317
FAX: (410) 367-1420
www.FleischmannsVinegar.com

Hon. Vernon Williams
Surface Transportation Board
1925 K. Street, NW
Washington, DC 20423

January 9, 2006

Re: Norfolk Southern Railway Company Abandonment of
Cockeysville Industrial Track in Baltimore County, MD

Dear Sir:

I am Plant Manager at Fleischmann's Vinegar Company, Inc. ("Fleischmann's"). I am writing to indicate Fleischmann's support for the application of Norfolk Southern Railway Company and Pennsylvania Lines LLC ("NS") to abandon and discontinue all rail freight services on the NS line between North Avenue and Cockeysville in Baltimore, Maryland. This track is known as the "Cockeysville Industrial Track" or the "Light Rain North" line.

Fleischmann's has a facility located at 1900 Brand Avenue in Baltimore, MD that is located on the Cockeysville Industrial Track. At that facility, we manufacture white distilled vinegar. While Fleischmann's has in the past relied on rail service at this location, we have made other arrangements for our transportation needs. As a result, we agree to support the NS application to abandon this line and cease providing rail service to our facility.

In addition, we acknowledge and agree with the position of the Maryland Department of Transportation and the Maryland Transit Administration that neither of those agencies, nor the State of Maryland, has acquired nor will acquire any common carrier obligation to provide freight rail service to the Fleischmann's Brand Avenue plant on the Cockeysville Industrial Track.

If you any question about this matter, Please do not hesitate to call on me.

Sincerely,

Thomas Q. Minarik
Plant Manager

cc: James R. Paschall, Esquire, Norfolk Southern Corp. FVC. Inc.
Charles A. Spitulnik, Esquire, Counsel for Maryland DOT

C



Hon. Vernon Williams
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: Norfolk Southern Railway Company Abandonment of Cockeysville
Industrial Track in Baltimore County, MD

Dear Sir:

I am Vice President and General Manager – North American Performance Minerals and Ceramics at E.C.C.A. Calcium Products, Inc. d/b/a IMERYS Pigments and Additives Group ("IMERYS"). I am writing to indicate IMERYS's support for the application of Norfolk Southern Railway Company and Pennsylvania Lines LLC ("NS") to abandon and discontinue all rail freight services on the NS line between North Avenue and Cockeysville in Baltimore, Maryland. This track is known as the "Cockeysville Industrial Track" or the "Light Rail North" line.

IMERYS has a facility located at 10000 Beaver Dam Road in Cockeysville, MD that is located on the Cockeysville Industrial Track. At that facility, we mine and process ground calcium carbonate. While IMERYS has in the past relied on rail service at this location, we have made other arrangements for our transportation needs. As a result, we are pleased to support the NS application to abandon this line and cease providing rail service to our facility. Moreover, we acknowledge and agree with the position of the Maryland Department of Transportation and the Maryland Transit Administration that neither of those agencies, nor the State of Maryland, has acquired nor will acquire any common carrier obligation to provide common carrier freight service with respect to the Cockeysville Industrial Track.

If you have any questions about this matter, please do not hesitate to call on me.

Sincerely,

A handwritten signature in cursive script, reading "Catherine H. LaFiandra".

Catherine H. LaFiandra

cc: James R. Paschall, Esquire, Norfolk Southern Corp.
Charles A. Spitulnik, Esquire, Counsel for Maryland DOT

ND: 4838-6515-5584, Ver 1

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IMERYS is a business name of IMERYS Pigments, Inc., IMERYS Kaolin, Inc. and IMERYS Marble, Inc.
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